



State of Utah
Department of Natural Resources
Division of Oil, Gas and Mining
Coal Regulatory Program Directive

Directive Number:
Adm -004

Effective Date:
July 1, 1997

Supersedes:
Pemit Transfers, Ownership,
& Control Changes Directive
Dated July 14, 1995

Subject: **Permit Transfers, Ownership & Control Changes**

Approved: _____ On: _____
James W. Carter, Director, Division of Oil, Gas, and Mining

DISCLAIMER

“This non-binding directive is intended for internal direction for the Utah Coal Regulatory Program to clarify the implementation of the Utah Coal Rules. It neither confers rights nor imposes obligations on the Division or any other party. In the case where a conflict is perceived to exist between this directive and the Utah Coal Rules, the rules prevail.”

ABSTRACT

The Utah Coal Regulatory Program requires permit transfers pursuant to R645-303-300: "No transfer, assignment, or sale of rights granted by a permit will be made without the prior written approval of the Division". Transfer contemplates movement of permit rights from one entity or person (permittee) to another, separate person or entity (permittee). Mergers, stock transfers, board and officer changes that do not require a change in permittee are not transfer of permit rights, only changes in ownership and control of the leadership in the permitted entity.

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1. Executive Summary and Purpose

Clarification of DOGM's position on permit transfers, corporate mergers, and ownership and control changes. A method for documenting the Division's findings is set forth in the procedure section of this directive.

2. Regulatory Basis

R645-303-300 thru 360.

300. Transfer, Assignment, or Sale of Permit Rights.

310. General Information. No transfer, assignment, or sale of rights granted by a permit will be made without the prior written approval of the Division.

320. Application Requirements. An applicant for approval of the transfer, assignment, or sale of permit rights will:

321. Provide the Division with an application for approval of the proposed transfer, assignment, or sale including:

321.100. The name and address of the existing permittee and permit number or other identifier;

321.200. A brief description of the proposed action requiring approval; and

321.300. The legal, financial, compliance, and related information required by R645-301-100 for the applicant for approval of the transfer, assignment, or sale of permit rights;

322. Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent; and

323. Obtain appropriate performance bond coverage in an amount sufficient to cover the

proposed operations, as required under R645-301-800.

330. Public Participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the Division within 30 days of the advertisement publication described under R645-303-322.

340. Criteria for Approval. The Division may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor:

341. Is eligible to receive a permit in accordance with R645-300-132 and R645-300-133;

342. Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by R645-301-800; and

343. Meets any other requirements specified by the Division.

350. Notification.

351. The Division will notify the permittee, the successor, commentators, and the Office of its findings.

352. The successor will immediately provide notice to the Division of the consummation of the transfer, assignment, or sale of permit rights.

360. Continued Operation Under Existing Permit. The successor in interest will assume the liability and reclamation responsibilities of the existing permit and will conduct the coal mining and reclamation operations in full compliance with the State Program and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in the R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-310, R645-302-320, and R645-303.

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3. Definitions

"Ownership and Control (O&C)" means, for the purpose of this directive, being an officer or director of an entity linked to the permittee, being the operator of a surface coal mining operation, having the ability to commit the financial or real property assets or working resources of an entity, being the general partner in a partnership, by record owning 10-50% of an entity, having the contractual authority to determine the manner in which a permittee conducts coal mining and reclamation operations.

"Permit Transfer" means, for the purposes of this directive, a permitting action resulting in a change in the name of the permittee of a coal mining and reclamation operation regulated by the Division of Oil, Gas and Mining that requires prior approval with R645-303-310 through 360 by the Division.

"Permittee" means a person holding, or required by the Act or the R645 rules to hold, a permit to conduct coal mining and reclamation operations issued by the Division pursuant to the state program or under the Cooperative Agreement pursuant to Section 523 of P.L. 95-87, by the Director of the Office and the Division.

"Person" means an individual, Indian tribe when conducting coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint-stock company, firm, company, corporation, cooperative or other business organization, and any agency, unit, or instrumentality of federal, state, or local government including any publicly owned corporation of federal, state, or local governments.

4. Policy

A. The Division must enter ownership and control information into the OSM Applicant Violator System (AVS) system to verify whether, upon a change of ownership and control, the subject permit is improvidently issued.

B. Corporate mergers shall be treated as ownership and control changes (not permit transfers) when there is no proposed change in the permittee's name.

C. Corporate mergers that result in a change in the name of the permittee will be processed as permit transfers, under R645-303-310-360.

D. This directive will be reviewed for modification upon:

- (1) A finding by the Office of Surface Mining (OSM) that implementation of contained policies and procedures are less effective than federal requirements existing at the time the directive is signed; or
- (2) Upon modification of 30 CFR 774.17, transfer, sale and assignment of permit rights.

5. Procedure

Permittee Submittal:

A. To begin a permit transfer the legal and financial information (R645-301-100) for the new permittee should be submitted to the Division in a format to insert into the approved Mining and Reclamation Plan. The name of the existing permittee and description of the proposed action (permit transfer) can be included in a separate permit transfer document. A permit change form should be completed for the permit transfer.

B. Advertisement of the proposed permit transfer is published once in a newspaper of general circulation in the locality of the operations involved. This advertisement must include the name and address of the applicant, the permittee, the permit number, and geographic location of the permit and at the address to which written comments may be sent (Division of Oil, Gas, and Mining, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180-1203). A 30-day comment period follows the advertisement. If there are written protests, an informal conference

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will be held.

C. There is also the requirement for public liability insurance (R645-301-389), posting of a reclamation bond (R645-301-800), and completion of the Reclamation Agreement.

Division Procedure:

A. When the Division has reason to believe that an ownership or control change has occurred, a division order will be sent to the permittee requiring an update of ownership and control information within 30 days of receipt of the order.

(1) Ownership and control changes which have occurred and are found by the Division on the basis of this directive to require a permit transfer, shall be the subject of a notice of violation to the permittee.

(2) Ownership and control changes that are found by the Division not to be permit transfers shall be processed via steps B through F below.

B. Within 10 working days of receipt of updated ownership and control information, the Division will enter the updated O&C information into the OSM AVS system, and will query the system for potential permit blocks.

C. If the query of the AVS system does not recommend a permit block, the Division will make a written finding substantiating the date of the AVS query and the results.

D. If the AVS query results in a conditioned approval, the Division will make a finding that a permit block was not recommended by AVS at the time of the query.

E. If the AVS query results in a block, the Division will make a written finding to that effect, accompanied by a hindrance violation issued to the operator. The Division will notify the OSM Field Office that it has reason to believe that it has an improvidently issued permit situation at hand, and shall describe the Division's action plan to rectify the improvidently issued permit.

F. Resolution of the improvidently issued permit shall be made in the form of a written finding.

6. Delegated Responsibilities

A. Accountability for entry of ownership and control data into AVS: Coal Permit Coordinator.

B. Recommendation from AVS: Preparation of Findings and Division's action plans if an improvident permit is issued.

C. Signing of findings documents: Associate Director, Mining.

7. Documentation/ Distribution

Written findings described in Section 4A(1) through (6).

8. Reporting Requirements

The Division will notify the permittee, the successor, commentators, and OSM of its findings for the permit transfer.

9. References

None.

10. Effect on Other Documents

Supersedes Permit Transfers, Ownership, & Control Changes directive dated July 14, 1995.

11. Division Contact/Work Group

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